

STATE OF NEW HAMPSHIRE

GRAFTON, SS.

SUPERIOR COURT

Docket No. 05-E-383

Frederick J. Murray

v.

Special Investigation Unit of the Division of State Police of the New Hampshire Department of Safety; Grafton County Sheriff's Department; Grafton County Attorney's Office; New Hampshire Attorney General Kelly A. Ayotte; New Hampshire Governor John J. Lynch; Hanover Police Department; Director of the Division of State Police of the New Hampshire Department of Safety; Commander of the State Police Troop F in Twin Mountain; Troop F of the New Hampshire State Police in Twin Mountain; New Hampshire Fish and Game Department Region 2; and Historic Case Unit in Major Crimes of the Division of State Police of the New Hampshire Department of Safety

**SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF OBJECTION TO
MOTION FOR PRELIMINARY INJUNCTION**

I. INTRODUCTION

Frederick J. Murray, petitioner, has brought an action seeking an injunction ordering respondents to disclose documents pursuant to RSA 91-A (The Right-to-Know Law) relating to an ongoing investigation into the disappearance of his daughter, Maura Murray. While the government respondents (hereinafter referred collectively as the "State") understand the concern of any parent or relative of a missing person, the motive and identity of the person requesting records under RSA 91-A cannot be considered in determining whether the records should be released under RSA 91-A.¹ *Mans v. Lebanon School Board*, 112 N.H. 160, 162 (1972)

Respondents denied Mr. Murray's requests because the records requested are investigative in nature and therefore fall under the exception to RSA 91-A created by the New

¹ There is one exception to this rule – if the only basis for withholding the records are that they are personal records of an individual that has a privacy interest in those records, if the person making the request is the person that the records are about, then that individual may have a right to see their own records that are in government hands, unless some other exemption also applies.

Hampshire Supreme Court, *see Lodge v. Knowlton*, 118 N.H. 574 (1978), or alternatively fall under other exemptions to RSA 91-A. This court upheld the state's decision after hearing based on the law enforcement exemption.

Petitioner appealed and the New Hampshire Supreme Court has remanded for a further determination. The Supreme Court described the standard to be applied on remand as:

In cases such as this one, generic determinations of likely interference often will suffice. *Id.*; *see also Robbins Tire*, 437 U.S. at 236. When generic determinations are used, the withholding “should be justified category-of-document by category-of-document not file-by-file.” *Curran*, 813 F.2d at 475 (quotation and ellipses omitted); *see also Crooker v. Bureau of Alcohol, Tobacco & Firearms*, 789 F.2d 64, 66-67 (D.C. Cir. 1986). The categorization should be clear enough to permit a court to ascertain how each category of documents, if disclosed, could interfere with the investigation. *Curran*, 813 F.2d at 475. The categories must be distinct enough to allow meaningful judicial review, yet not so distinct as to reveal the nature and scope of the investigation. *Id.*

Murray v. NH Division of State Police, et. al., ___ N. H. ___, 913 A.2d 737 (2006).

In the order on remand the Supreme Court emphasized two points as guidance for trial courts. First, that under the standard adopted from *Curran*, some types of categories, when coupled with careful explanation to the trial court as to how interference with enforcement proceedings could occur, will satisfy the standard. Examples include: “details regarding initial allegations giving rise to th[e] investigation; interviews with witnesses and subjects; investigative reports furnished to the prosecuting attorneys; contacts with prosecutive attorneys regarding allegations, subsequent progress of investigations, and prosecutive opinions” *Curran*, 813 F.2d at 476.

Second, in the case of one-of-a-kind records, *Curran* would not preclude application of the exemption if an enforcement agency made limited use of a “miscellaneous” category to avoid having to set forth a precise – and potentially compromising – description of the record(s). *See Id.*

The New Hampshire Supreme Court went on to state that, although Respondents' categorization of documents might be sufficient to meet the standard set out above, "the respondents offered no affidavits, testimony, or other evidence which, for example: (1) defined these categories more precisely; (2) explained how disclosure of the information within these categories could interfere with any investigation or enforcement; or (3) explained why "there was no reasonably segregable portion of any of the withheld material suitable for release"

The Respondents submit this supplemental memorandum in support of their objection to the petition of injunctive relief to supply the further information that the Supreme Court has indicated is required and to reiterate the additional grounds for objection to the RSA 91-A request that the trial court did not previously address.

I. ARGUMENT

1. Additional Description Of Documents By Category

The following additional descriptions of the twenty categories of documents in Exhibit A attached to the Respondents objection to the motion for preliminary injunction is hereby provided. See affidavits of Detective Todd Landry, Exhibit B², Senior Assistant Attorney General Nancy J. Smith, Exhibit C, and Senior Assistant Attorney General Jeffery Strelzin, Exhibit D, attached hereto.

A. Phone records: Telephone records related to Maura Murray or records obtained from family members, friends, or other persons that are, or may have been of interest or that may be relevant to Maura Murray's activities at or around the time of her disappearance. Except for record of Mr. Murray, copies of which have been provided, there are no reasonably segregable records in this category. See Affidavit of Nancy J. Smith, Exhibit C.

² As this is a supplement to the original objection, Respondents have started the numbering of Exhibits with "B" as Exhibit A is attached to the original objection.

B. Subpoenas (including search warrants): To the extent there are any subpoenas that are not grand jury subpoenas these materials will be produced. See Affidavit of Nancy Smith, Exhibit C, with list of documents produced. There are grand jury subpoenas that are not public and which would pinpoint the focus of the investigation, thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. There are also search warrants that are not public and which would pinpoint the focus of the investigation, thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. Detective Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony. See Affidavits B and Exhibit D, attached hereto.

C. Credit card information: To the extent that any credit card information has been sought or obtained from any person, including Maura Murray, in addition to the privacy rights of those individuals as well as Ms. Murray, revealing that information would pinpoint the focus of the investigation, thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. There are no reasonable segregable records in this category.

D. Criminal record checks: Criminal Records checks are confidential and may not be disclosed except to the individual involved or law enforcement under RSA 106-B:14 and are therefore not subject to RSA 91-A. Furthermore, identification of specific individuals regarding whom records have been requested would pinpoint the focus of the investigation, thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. There are no reasonable segregable records in this category.

E. Narrative reports by the investigators: These documents comprise the majority of the file. They include reports from approximately 66 law enforcement officials including local police, sheriffs, out of state police, and the FBI, as well as State police and Fish and Game. See

Affidavit of Landry, Exhibit B. The majority of the reports are by Det. Landry, Sgt. Bruno and Tp. Hubbard. The reports relate to searches and subpoenas, approximately 254 contacts with various sources and follow-up on contacts, approximately 106 witness interviews, as well as reports regarding obtaining documents and evidence and examination of evidence, including lab reports. These records would pinpoint the focus of the investigation thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. Detective Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony. To the extent that there are any materials in this category that have been made public previously or that are from a public source that would not compromise the investigation they have been produced to Mr. Murray. See Affidavit of Nancy Smith, Exhibit C.

F. Witness interviews (tapes and transcripts): Not all interviews with individuals were taped. The majority of the several hundred contacts that have been made in this matter are short interviews and telephone interviews that are summarized in the investigators' reports listed above. To the extent that taped interviews were conducted, they have been transcribed and are attached to the investigators' reports. There are 19 written statements and 3 transcribed interviews, these records would pinpoint the focus of the investigation thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. There are no reasonable segregable records in this category. Detective Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony.

G. Polygraph examinations (tapes and charts): There are four polygraph examinations, these records would pinpoint the focus of the investigation thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. Detective

Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony.

H. Possessed Property reports (referencing all physical evidence seized): In addition to items taken from Maura Murray's vehicle, items of clothing or other items found during searches that may be of interest or that have been given to police that someone believes may have some relevance, other items that have been obtained through search warrants and other items that may relate to this case which cannot be identified without disclosing the focus of the police investigation thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. Detective Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony.

It is noted that one item in the possession of the state police is the vehicle that Maura Murray was driving. After inspection and examination the vehicle was released to Mr. Frederick Murray, as the owner. He relinquished any claim to it to the storage facility, which gave it to the state police.

I. Lab reports: Various items of physical evidence have been analyzed by the State Police lab to determine if they have any connection to Murray and to assist the police in further investigation of this matter. The exact nature of the tests performed and the items of evidence on which the test were conducted cannot be released without severely hindering the investigation, endangering the viability of any future prosecution and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct. Detective Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony.

J. Police/dispatch call logs: It is believed that the initial Grafton County Sheriffs Department Incident Log, the NH Uniform Police Accident Report and the Woodsville Ambulance response roster have previously been released and have therefore been provided to Mr. Murray. See Affidavit of Nancy Smith, Exhibit C. To the extent there are other records of the reports of the Murray vehicle accident and law enforcement response to the scene, these records would pinpoint the focus of the investigation or provide valuable information that could be used by a suspect to avoid detection thereby damaging the investigation for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. Detective Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony.

K. Photographs: In addition to the Maura Murray's vehicle, items of clothing or other items found during searches that may be of interest or that have been given to police that someone believes may have some relevance, other items that have been obtained through search warrants which as indicated above are sealed (same comment, no reference above), and other items or property that may relate to this case which cannot be identified without disclosing the focus of the police investigation thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. Detective Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony.

L. Correspondence (letters and e-mails): To the extent there is correspondence from Mr. Murray, or his attorney or to Mr. Murray or his attorney, that was in the state police files, it is produced. See Affidavit of Nancy Smith, Exhibit C. To the extent there are newspaper clippings or other publicly available documents that have been kept by law enforcement concerning Maura Murray, they have been produced. See Affidavit of Nancy Smith, Exhibit C.

The remainder of the documents in this category are communications between the attorney general's office and the state police regarding the investigation or between the state police and other law enforcement agencies about the investigation. To the extent there is other correspondence containing anything purporting to be a lead or relevant evidence, it is summarized in and attached to an investigative report and covered under "E. Narrative reports by the investigators" above. These items cannot be disclosed without damaging the investigation for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D.

M. Attorney notes: Attorney Jeffrey Strelzin, head of the NH Department of Justice homicide unit has been the contact in the NH Department of Justice with State Police regarding this matter. He has kept his own notes regarding meetings, contacts and evidence regarding this matter to assist in the event of any future prosecution. These items cannot be disclosed without damaging the investigation for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D.

N. One-party intercept memoranda: This is the one-of-a-kind type of item that the Supreme Court recognized cannot be described specifically without irreparably disclosing what it consists of. Affidavits of Landry and Strelzin. See Exhibits B and D. Detective Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony.

O. Maps and diagrams: Other than one topographical map w/enlargements that is produced (see Exhibit C) any maps or diagrams would indicate the specific areas of law enforcement focus, or additionally contain notations of specific items of interests or locations of interest, which cannot be identified without disclosing the focus of the police investigation thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits

B and D. Detective Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony.

P. Investigative duty assignment. Other than the records under investigative reports, there are no separate records in this category.

Q. Tax records: Property tax records have been consulted or obtained. Although property tax records are public, the fact that the police have obtained and retained specific tax records in the investigative file would identify places that are of interest in the investigation which cannot be identified without disclosing the focus of the police investigation thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. Detective Landry and SAAG Strelzin can address this item with further specificity by *in camera* affidavit or testimony.

R. Employment personnel files: To the extent that any employment or personnel information has been sought or obtained from any person, including Ms. Murray, in addition to the privacy rights of those individuals, revealing that information would pinpoint the focus of the investigation, thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. There are no reasonable segregable records in this category.

S. Medical records: To the extent that any medical information has been sought or obtained from any person, including Ms. Murray, in addition to the privacy rights of those individuals, revealing that information would pinpoint the focus of the investigation, thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. There are no reasonable segregable records in this category.

T. Military records: To the extent that any military or educational information has been sought or obtained from any person, including Ms. Murray, in addition to the privacy rights

of those individuals, revealing that information would pinpoint the focus of the investigation, thereby damaging it for the reasons stated in the Affidavits of Landry and Strelzin. See Exhibits B and D. There are no reasonable segregable records in this category.

2. Interference with any Investigation or Enforcement

The potential harmful effects of release of law enforcement investigation materials, particularly at a pre-indictment stage, was summarized in detail by the New Hampshire Supreme Court in *Petition of State of New Hampshire (Bowman Search Warrants)* as including the following: many prospective witnesses would be hesitant to come forward voluntarily; grand jury witnesses would be hesitant to testify truthfully as they would be open to retribution or inducements; those about to be indicted may flee; the risk of attempts to tamper with grand juries; if the nature and scope of the investigation is known evidence may be destroyed; individuals involved in criminal activity would be able to craft stories to fit the current state of the investigation or to coordinate stories; concern over releasing information about people that ultimately prove innocent and concern over the potential defendants right to a fair trial. (citations omitted). *Bowman Search Warrants*, 146 N.H. 621, 627-628 (2001).

Detective Landry and SAAG Strelzin have each been involved in many criminal cases. Both describe the potential general impact of early disclosure of law enforcement investigation in their public affidavit filed herewith. See Exhibits B and D. Generally the dangers are that, if there is or may be a person of interest, revealing that information publicly would 1.) alert that person to the interest and make it harder to gain her or his cooperation; 2.) enable that person of interest to use what other witnesses have said to cover their tracks or to muddy the waters; 3.) endanger witnesses that have provided information concerning that person; 4.) result in witnesses being reluctant to talk to law enforcement if they believe that what they say would be available

to the person of interest; and 5.) result in public speculation resulting in false leads including everything from sightings in unlikely locations to reports from psychics, that must be followed up on but that consume time and resources; 6.) result in the sources that have provided information being pursued by outside, non-law enforcement sources so that they feel harassed and simply refuse to have anything further to do with the investigation; 7.) the fact that a warrant or subpoena was obtained, particular property searched or particular interviews conducted, if made public, could lead to speculation that the government believes persons that may turn out to be innocent have been engaged in criminal activity but at a pre-indictment stage those persons would have no forum in which to exonerate themselves, and 8.) revealing what other witnesses have said can taint the credibility of witnesses that become aware of the other witnesses statements by bringing into question whether what they recall is their own recollection or has been tainted by what they have heard that someone else reported. See Affidavits, Exhibits B and D.

Even if law enforcement and the prosecutor think they have ruled out a contact or lead as not believed to be involved in any possible criminal activity at this time, revealing this information would also damage law enforcement investigative ability and ultimately the ability to prosecute any case because 1.) this information could be used by anyone that was a legitimate suspect to divert attention from themselves, 2.) although the information may have been determined not to be relevant to Maura Murray, it may in fact be relevant to other criminal conduct: in fact information that has been gathered in this case has resulted in cases being opened investigating charges related to burglary, drugs, arson and criminal mischief³; and 3.) revealing what other witnesses have said can taint the credibility of witnesses that become aware of the other witnesses statements by bringing into question whether what they recall is their own

³ More specific information regarding these representations can only be made *in camera*.

recollection or has been tainted by what they have heard that someone else reported. See Affidavits Landry and Strelzin, Exhibits B and D.

In addition, it is often difficult to accurately predict what information will be important in a case months or years down the road. As SAAG Strelzin can attest, the State has recently been able to prosecute several murder cases over twenty years old. He has also had a case in which the person of interest turned out to be entirely the wrong person. Seemingly innocuous facts can take on great importance when they are viewed in light of all the evidence that is eventually collected in a case. Another important factor that cannot be predicted is what claims or defenses may be made on behalf of a defendant. See Affidavit Strelzin, Exhibit D. Depending on those claims or defenses, information or evidence that seemed unimportant at an earlier time could become very important during the prosecution phase of the case. For these reasons, it is important to protect the integrity of an investigation and the viability of any potential prosecution by maintaining the secrecy of the ongoing investigation.

3. Reasonably Segregable Information

As stated above, it is often impossible to tell which tiny piece of information may ultimately turn out to be vital. Additionally, minute details that are only available through the combined knowledge gleaned from all of the investigation, is often relied on by prosecutors and police to judge the credibility of witnesses.

However, law enforcement may sometimes choose to make some information public for various reasons including public safety or to try to solicit leads. Likewise they may have information that was received from the person asking for the release of information.

Counsel herein has reviewed the State respondents records and files, as well as consulting with the other respondents to identify any records that could be segregated and produced. All

records that have previously been made public, that are routinely made public such as uniform automobile accidents reports that are provided for insurance purposes, that came from a public source **and** do not reveal any focus of investigation, or that came from or were sent to Frederick Murray, the person requesting the information herein, are identified in the attachment to the affidavit of Nancy J. Smith and copies of those documents have been provided to Petitioner. See Exhibit C.

4. Other Exceptions to the Right to Know Law

The purpose of the Right to Know Law is to “ensure the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people.” RSA 91-A:1; *see New Hampshire Civil Liberties Union v. City of Manchester*, 149 N.H. 437, 438 (2003). “That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various government files but reveals little or nothing about an agency’s own conduct.” *Union Leader Corp. v. New Hampshire Housing Fin. Auth.*, 142 N.H. 540, 554 (1997).

RSA 91-A:5, IV specifically exempts records pertaining financial, employment, academic examinations; personnel records and medical records. *See Hounsell v. North Conway Water Precinct*, No 2005-505, slip op. (N.H. August 1, 2006); *see also Lamy v. NH Public Utilities Commission*, 152 N.H. 106 (2005). The Right to Know Law also specifically exempts from disclosure records “whose disclosure would constitute an invasion of privacy.” RSA 91-A:5, IV; *see New Hampshire Civil Liberties Union v. City of Manchester*, 149 N.H. at 440.

When the Court reviews the privacy exemption under RSA 91-A, the Court will balance the public interest in disclosure of the requested information against the government interest in nondisclosure and the individual’s privacy interest in nondisclosure. *See Union Leader Corp. v.*

City of Nashua, 141 N.H. 473, 475-76 (1996). In considering whether disclosure of the records in question would constitute an invasion of privacy, the Court will undertake a three step analysis: (1) The Court will “evaluate whether there is a privacy interest at stake that would be invaded by disclosure”; (2) The Court will “assess the public’s interest in disclosure”, *i.e.*, whether the information serves the purpose of informing the public about the conduct and activities of government; and (3) The Court will “balance the public interest in disclosure against the government interest in nondisclosure and the individual’s privacy interest in nondisclosure.” *New Hampshire Civil Liberties Union v. City of Manchester*, 149 N.H. at 440 (citing *Union Leader Corp. v. City of Nashua*, 141 N.H. 473, 476-77 (1996) and *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 762, 771-73 (1989) (applying federal Freedom of Information Act (FOIA))).

In an analogous case involving a school district’s refusal to disclose the requested names and addresses of students and their parents, this Court ruled that the release of the requested information would invade the privacy of the students and their parents. *See Brent v. Paquette*, 132 N.H. 415, 427-28 (1990). The Court held that “any intrusion into a person’s home necessarily constitutes an invasion of privacy.” Under the privacy provision as well as under the specific exemptions in RSA 91-A:5 for financial, educational, employment and medical records the following categories of records as identified in Exhibit A are not subject to disclosure under RSA 91-A:5, IV.

- A. Phone records: The telephone records are personal records of the individual.
- B. Credit card information: These records are confidential financial record.
- D. Criminal record checks: Criminal Records checks are confidential under RSA 106-B:14 and are therefore not subject to RSA 91-A.

- R. Employment or personnel files.
- S. Medical records.
- T. Military records: These are employment of educational records.

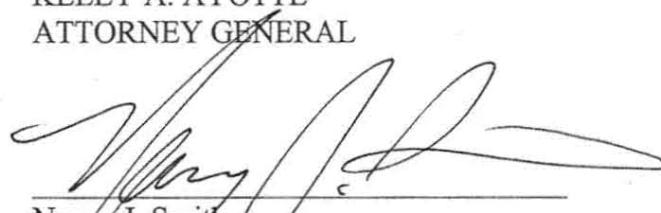
WHEREFORE, for the reasons stated herein, and as set forth previously in the objection to the petition filed herein, the Defendants respectfully request that the petition be denied.

Respectfully submitted,

SPECIAL INVESTIGATION UNIT OF THE
DIVISION OF STATE POLICE, *ET AL.*

By their attorneys,

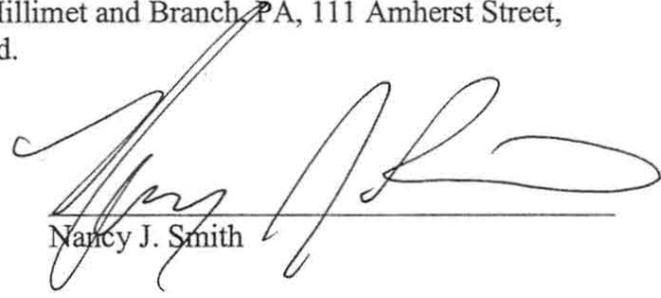
KELLY A. AYOTTE
ATTORNEY GENERAL



Nancy J. Smith
Senior Assistant Attorney General
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Concord, New Hampshire 03301-6397
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March 30, 2007

I hereby certify that a copy of the foregoing was mailed this day, postage prepaid, to Timothy J. Ervin, Esquire, Gallant & Ervin, One Olde North Road, Suite 103, Chelmsford, MA 01824, and Brian Cullen, Esq. Devine, Millimet and Branch, P.A, 111 Amherst Street, Manchester, NH 03101, counsel of record.



Nancy J. Smith

AFFIDAVIT OF Todd D. Landry

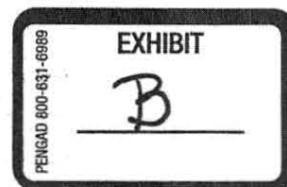
I, Todd D. Landry, hereby swear and affirm as follows;

1. I am currently employed by the State of New Hampshire, Division of State police as Sergeant. I have been employed by the State Police for 13 years. I have been involved in the investigation regard Maura Murray since February, 2004.

2. The following is based on my experience with criminal investigations in general and the investigation regarding Maura Murray in particular.

3. The Maura Murray investigation is open and ongoing. Based on my experience with criminal investigations and the information in this case in particular, I have a reasonable belief that this investigation may lead to criminal charges. However, at this stage of the investigation, it would be extraordinarily detrimental to our ability to continue this investigation if we are required to make public whether or not there is a person or persons of interest and the information on which those beliefs are based. In my experience in this case and in other cases, our investigation would be hindered in the following ways:

- a. If there is or may be a person of interest, revealing that information publicly would 1.) alert that person to our interest and make it harder to gain her or his cooperation; 2.) enable that person of interest to use what other witnesses have said to cover their tracks or to muddy the waters; 3.) endanger witnesses that have provided information concerning that person; 4.) result in witnesses being reluctant to talk to us if they believe that what they tell us would be available to the person of interest; and 5.) result in public speculation resulting in false leads including everything from sightings in unlikely locations to reports from psychics, that must be followed up on but that consume time and resources; 6.) result in the sources that have provided information being pursued by outside, non-law enforcement sources so that they feel harassed and simply refuse to have anything further to do with the investigation; 7.) the fact that a warrant or subpoena was obtained, particular property searched or particular interviews conducted, if made public, could lead to speculation that the government believes persons that may turn out to be innocent have been engaged in criminal activity but at a pre-indictment stage those persons would have no forum in which to exonerate themselves, and 8.) revealing what other witnesses have said can taint the credibility of witnesses that become aware of the other witnesses statements by bringing into question whether what they recall is their own recollection or has been tainted by what they have heard that someone else reported.
- b. Revealing contacts and interviews related to leads that are not believed to be involved in any possible criminal activity at this time would also damage our investigative ability and ultimately the ability to prosecute any case because



1.) this information could be used by anyone that was a legitimate suspect to divert attention from themselves, 2.) although the information may have been determined not to be relevant to Maura Murray, it may in fact be relevant to other criminal conduct: in fact information that has been gathered in this case has resulted in cases being opened investigating charges related to burglary, drugs, arson and criminal mischief; and 3.) revealing what other witnesses have said can taint the credibility of witnesses that become aware of the other witnesses statements by bringing into question whether what they recall is their own recollection or has been tainted by what they have heard that someone else reported.

4. I am familiar with the State Police files related to Maura Murray which currently comprise six volumes of materials, 2938 pages, as well as the physical evidence, tapes, any other material such as newspaper clippings that have been maintained. I have reviewed all of the material in our possession and provide the following additional descriptions of the materials contained in the files by the twenty categories of documents previously provided to the court in this matter.

A. Phone records: The telephone records have been obtained from family members, friends, or other persons that are, or may have been of interest or relevant to Maura Murray's activities at or around the time of her disappearance. I have been trained and advised by counsel that, in addition to the concerns related to compromising the law enforcement investigation outlined in paragraph 3 above, financial information, personnel records, medical records and military records and other personal information are subject to privacy rights of the individual that they concern.

B. Subpoenas (including search warrants): To the extent there are any subpoenas that are not grand jury subpoenas I have been advised that these materials will be produced. There are grand jury subpoenas that are not public and which would pinpoint the focus of our investigation, thereby damaging it for the reasons stated above. There are also search warrants that are not public and which would pinpoint the focus of our investigation, thereby damaging it for the reasons stated above. I can address this item with further specificity by *in camera* affidavit or testimony.

C. Credit card information: These records are the personal property of the individuals involved and were either provided voluntarily or by grand jury subpoena to the police. To the extent that any credit card information has been sought or obtained from any person other than Maura Murray, revealing that information would pinpoint the focus of our investigation, thereby damaging it for the reasons stated above. I have been trained and advised by counsel that, in addition to the concerns related to compromising the law enforcement investigation outlined in paragraph 3 above, financial information, personnel records, medical records and military records and other personal information are subject to privacy rights of the individual that they concern.

D. Criminal record checks: Criminal Records checks are confidential and may not be disclosed except to the individual involved or law enforcement under RSA 106-B:14 and are therefore not subject to RSA 91-A. Furthermore, identification of specific individuals regarding whom records have been requested would pinpoint the focus of our investigation, thereby damaging it for the reasons stated above. I can address this item with further specificity by *in camera* affidavit or testimony.

E. Narrative reports by the investigators: Tp. Hamilton, NHSP; Sgt Smith, Haverhill PD; Cpl. Charles, Haverhill PD; Ptl. Cashin, Haverhill PD; Tp Monaghan, NHSP; C.O. Jellison, NH Fish and Game; Chief Williams, Haverhill PD; Det. Landry, NHSP; Cpl Trott, Haverhill PD; Tp. Steinmetz, NHSP; Sgt. Bruno, NHSP; Tp. Pelletier, NHSP; Sgt. Beausoleil, NHSP; Det. Gilbert, NHSP; Ptl. Veno, Exeter, MA PD; TFC Cohen, NHSP; Sgt. Yorke, NHSP; Cpl Ontegco, Oxford County Sheriffs ME; Tp. Splittler, NHSP; Tp. Cooper, NHSP; Sgt. Berry, NHSP; Lt. Scarinza, NHSP; SA Alford, FBI; Tp. Martin, NHSP; Tp. Koehler, NHSP; Dep. Eck, Grafton County Sheriffs; Det. Sgt. Sinclair, VSP; Det. Hubbard, NHSP; SA Lazarski, FBI; Det. Belanger, NHSP; Sgt. Mudgett, NHSP; Sgt. Hayes, NHSP; Ptl. Johnson, UMASS PD; Ptl. Kellogg, UMASS PD; Det. Davies, UMASS PD; Det. Hagan, UMASS PD; Det. Oravec, UMASS PD; Det. Kedwell, UMASS PD; Det. Lisboa, UMASS PD; Ptl Rivera, Amherst MA PD; Ptl. Ruddock, Hadley MA PD; Sgt. Marshall, NHSP; Tp. Doyle, NHSP; Melissa Staples, NHSP; Lt. Bogardus, NH F & G; Sgt. West, NHSP; Ptl. Gray, Haverhill PD; Lt. Hester, NHSP; Lisa Corson NHSP; Ptl. Stickles, Rochester PD; Tp. Schulze, VTSP; Kevin McMahan, NHSP; Det. Conrad, NHSP-MCU; Det. Skahan, NHSP-MCU; Peterson, Haverhill, PD; Capt. Milliken, Sullivan County DOC; Ptl. Babine, Rochester, PD; Sgt. Armaganian, NHSP; Kimberly Rumrill, NHSP; Cpl. Champagne, NHSP; Det. Rowland, NHSP-MCU; Sgt. Lamson, NHSP; Det. Castoldi, NHSP; Ptl. Martin, Haverhill, PD; Det. Sgt. Letourneau, VSP; and Ken Carter, NHSP have all provided one or more investigation reports.

The majority of the reports are by Det. Landry, Sgt. Bruno and Tp. Hubbard. The reports relate to searches and subpoenas, approximately 254 contacts with various sources and follow-up on contacts, approximately 106 witness interviews, as well as reports regarding obtaining documents and evidence and examination of evidence, including lab reports. For the reasons stated in paragraph 3 above, I am strongly of the opinion that these documents cannot be released without severely hindering our investigation, endangering the viability of any future prosecution and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct. I can address this item with further specificity by *in camera* affidavit or testimony.

F. Witness interviews (tapes and transcripts): Not all interviews with individuals were taped. The majority of the several hundred contacts that have been talked to in this matter are short interviews and telephone interviews are generally summarized in

the investigators' reports listed above. To the extent that taped interviews were conducted, they have been transcribed and are attached to the investigators' reports. There are 19 written statements and 3 transcribed interviews. For the reasons stated in paragraph 3 above, I am strongly of the opinion that these documents cannot be released without severely hindering our investigation, endangering the viability of any future prosecution and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct. I can address this item with further specificity by *in camera* affidavit or testimony.

There is one two-page written statement by Mr. Murray that I have been advised will be produced.

G. Polygraph examinations (tapes and charts): There are four polygraph examinations. For the reasons stated in paragraph 3 above, I am strongly of the opinion that these documents cannot be released without severely hindering our investigation, endangering the viability of any future prosecution and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct. I can address this item with further specificity by *in camera* affidavit or testimony.

H. Possessed Property reports (referencing all physical evidence seized): In addition to items taken from Maura Murray's vehicle pursuant to search warrant, items of clothing or other items found during searches that may be of interest or that have been given to police that someone believes may have some relevance, other items that have been obtained through search warrants or grand jury subpoenas which as indicated above are sealed, and other items that may relate to this case which cannot be identified without disclosing the focus of the police investigation are in the possession of the state police. For the reasons stated in paragraph 3 above, I am strongly of the opinion that these items cannot be released or identified without severely hindering our investigation, endangering the viability of any future prosecution and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct. I can address this item with further specificity by *in camera* affidavit or testimony.

It is noted that one item in the possession of the state police is the vehicle that Maura Murray was driving. After inspection and examination the vehicle was released to Mr. Fredrick Murray, as the owner. He relinquished any claim to it to the storage facility, which gave it to the state police.

I. Lab reports: Various items of physical evidence have been analyzed by the State Police lab to determine if they have any connection to Murray and to assist the police in further investigation of this matter. The exact nature of the tests performed and the items of evidence on which the test were conducted cannot be released without severely hindering our investigation, endangering the viability of any future

prosecution and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct. I can address this item with further specificity by *in camera* affidavit or testimony.

J. Police/dispatch call logs: It is believed that the initial Grafton County Sheriffs Department Incident Log, the NH Uniform Police Accident Report and the Woodsville Ambulance response roster have previously been released are therefore being provided to Mr. Murray. To the extent there are other records of the reports of the Murray vehicle accident and law enforcement response to the scene, for the reasons stated in paragraph 3 above, I am strongly of the opinion that these documents cannot be released without severely hindering our investigation, endangering the viability of any future prosecution and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct.

K. Photographs: In addition to the Maura Murray's vehicle, items found during searches that may be of interest or that have been given to police that someone believes may have some relevance or items that have been obtained through search warrants or grand jury subpoenas, which as indicated above are sealed, and other items or property that may relate to this case which cannot be identified without disclosing the focus of the police investigation have been photographed. For the reasons stated in paragraph 3 above, I am strongly of the opinion that these items cannot be released or identified without severely hindering our investigation, endangering the viability of any future prosecution and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct. I can address this item with further specificity by *in camera* affidavit or testimony.

L. Correspondence (letters and e-mails): To the extent there is correspondence from Mr. Murray, or his attorney or to Mr. Murray or his attorney, I have been advised that these materials will be produced. To the extent there are newspaper clippings or other publicly available documents that have been kept by law enforcement concerning Maura Murray I have been advised that these materials will be produced.

The remainder of the documents in this category are communications between the attorney general's office and the state police regarding the investigation or between the state police and other law enforcement agencies about the investigation. To the extent there is other correspondence containing anything purporting to be a lead or relevant evidence, it is summarized in and attached to an investigative report and covered under "E. Narrative reports by the investigators" above.

M. Attorney notes: On information and belief, Attorney Jeffrey Strelzin, head of the NH Department of Justice homicide unit has been the contact in the NH Department of Justice with State Police regarding this matter.

N. One-party intercept memoranda: For the reasons stated in paragraph 3 above, I am strongly of the opinion that this item cannot be released or further identified without severely hindering our investigation, endangering the viability of any future prosecution causing the substantial likelihood of injury or harm to any person that cooperated in any such activity and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct. I can address this item with further specificity by *in camera* affidavit or testimony.

O. Maps and diagrams: Any maps or diagrams would indicate the specific areas of law enforcement focus or additionally contain notations of specific items of interests or locations of interest and therefore for the reasons stated in paragraph 3 above, I am strongly of the opinion that these items cannot be released or identified without severely hindering our investigation, endangering the viability of any future prosecution and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct. I can address this item with further specificity by *in camera* affidavit or testimony.

P. Investigative duty assignment logs - None other than in Investigative Reports.

Q. Tax records: Property tax records have been consulted or obtained. For the reasons stated in paragraph 3 above, I am strongly of the opinion that this item cannot be released or further identified without severely hindering our investigation, endangering the viability of any future prosecution causing the substantial likelihood of injury or harm to any person that cooperated in any such activity and substantially decreasing the likelihood that justice can be achieved for Maura Murray if it is determined that she has been the victim of criminal conduct. Although property tax records are public, the fact that the police have obtained and retained specific tax records in the investigative file would identify places that are of interest in the investigation. I can address this item with further specificity by *in camera* affidavit or testimony.

R. Employment personnel files: These records are the personal property of the individuals involved and were either provided voluntarily or by grand jury subpoena to the police. I have been trained and advised by counsel that, in addition to the concerns related to compromising the law enforcement investigation outlined in paragraph 3 above, financial information, personnel records, medical records and military records and other personal information are subject to privacy rights of the individual that they concern.

S. Medical records: These records are the personal property of the individuals involved and were either provided voluntarily or by grand jury subpoena to the police. I have been trained and advised by counsel that, in addition to the concerns related to compromising the law enforcement investigation outlined in paragraph 3 above,

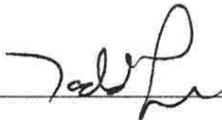
financial information, personnel records, medical records and military records and other personal information are subject to privacy rights of the individual that they concern.

T. Military records: These records are the personal property of the individuals involved and were either provided voluntarily or by grand jury subpoena to the police. I have been trained and advised by counsel that, in addition to the concerns related to compromising the law enforcement investigation outlined in paragraph 3 above, financial information, personnel records, medical records and military records and other personal information are subject to privacy rights of the individual that they concern.

5. As stated above, I can provide further *in camera* testimony to the court to explain the status of the investigation and the interrelationship between the documents and information currently in our file. I cannot emphasize strongly enough that it is a key component in almost every potential criminal investigation that potential suspects and the public **not** be privy to the information that we have been able to gather in order for us to be able to gauge the veracity of information we receive, preserve the credibility of witnesses and protect sources from potentially dangerous criminals.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

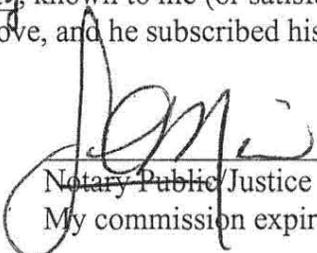
Dated: 3-15-07



THE STATE OF NEW HAMPSHIRE

COOS County

On the 15 day of March, 2007, before me, John Miller, the undersigned officer, appeared Sgt Todd Lantry, known to me (or satisfactorily proven) to be the person whose name appears above, and he subscribed his name to the foregoing instrument.



Notary Public/Justice of the Peace
My commission expires: 3/08

177336

Affidavit of Nancy J. Smith

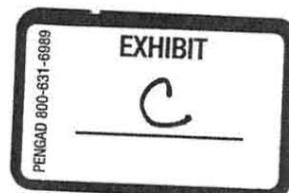
I, Nancy J. Smith, hereby swear and affirm as follows;

1. I am a Senior Assistant Attorney General in the Civil Bureau of the New Hampshire Department of Justice, and have been so employed since August 1992. This affidavit is based on my personal knowledge.

2. Subsequent to the first hearing on this matter, I assumed responsibility for this file after Attorney Daniel Mullen left our office. In preparing this supplemental response to the request for documents under RSA 91-A following the Supreme Court remand, I personally reviewed the State police investigative files furnished to our office. I have met with State Police to determine what if any other documents are in their possession, and I have consulted with other agencies, including local law enforcement named in the petition to determine if there are additional documents in their possession.

3. I received a detailed explanation from Detective Landry and Jeffrey Strelzin, of the harm that would likely result to the investigation that as set forth in their accompanying affidavits. With this in mind, I reviewed all of the materials to determine if there were any portions that are reasonably segregable that could be produced.

4. Attached hereto as Attachment 1 is a list of the documents that I was able to determine are reasonably segregable and that would not interfere with the law enforcement investigation because they have already been made public or came from a public source and they do not reveal the focus of the investigation. Additionally to the extent there are personal records of Mr. Murray that he provided or authorized law enforcement to obtain, in this case it has been determined that releasing those documents to him is unlikely to result in any harm to the investigation.



5. The State does not waive the right to assert the privacy of Mr. Murray's record as to any other person requesting records under RSA 91-A.

6. The State does not waive the right to assert that records of any other person in the possession of law enforcement either in this case or any other case may, on a case-by-case basis, be withheld from even the person that the records concern, as the privacy interest of the person is not the only privilege that may apply. For example, if records are obtained under grand jury subpoena, including subpoenas issued by the Attorney General's office for records for the grand jury, although they may concern a particular individual, disclosing those records to the person in question would be likely to harm the investigation.

7. The records identified in Attachment 1 hereto have been provided to Mr. Murray's counsel concurrently herewith. To the extent that these documents are in the possession of more than one agency from who records have been requested, including but not limited to local law enforcement, they have only been produced once.

8. To the extent that the records of the Attorney General's office include Mr. Murray's requests for documents under the federal FOIA statute and RSA 91-A, as well as the responses made by the Attorney General's office to Mr. Murray's requests, as well as the court pleadings filed by the Attorney General's office in regards to Mr. Murray's appeal related to the RSA 91-A request, those documents have not been produced again as they have previously been sent to Mr. Murray or his counsel of record.

9. The materials previously produced by AAG David Ruoff by letter dated January 1, 2006 consisting of materials from NH Fish and Game, Radio dispatch logs and City of Hanover Dispatch logs have not been produced again.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

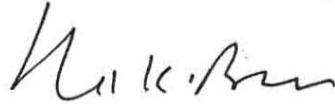
Dated: March 30, 2007


Nancy J. Smith

THE STATE OF NEW HAMPSHIRE

Merrimack County, SS.

On the 30th day of March, 2007, before me, Michael K. Brown, the undersigned officer, appeared, Nancy J. Smith known to me (or satisfactorily proven) to be the person whose name appears above, and she subscribed her name to the foregoing instrument.



Notary Public/Justice of the Peace
My commission expires: 7/10/07

Attachment 1 to Affidavit of Nancy J. Smith

Documents to Produce in Murray

<u>Page Number(s)¹</u>	<u>Description of Document</u>
14	Grafton County Sheriff's Department Incident Log
15-16	N.H. Uniform Police Traffic Accident Report
416	E-911 Subpoena (not grand jury)
431-440	Cellular records of 781-964-4628, Frederick Murray telephone
555	Woodville Ambulance Response Roster
704-712	Newspaper Articles
758-766	Investigation Report and Documents re: National Center for Missing Children and Missing Posters of Maura Murray
915-931	2/8/04 Massachusetts Motor Vehicle Crash Report 0333 hours, Operator Maura Murray
986-987	Written Statement of Frederick Murray
1327	Subpoena Fleet ATM video for 2/9/04
1340	Subpoena to UMASS re: financial records for Maura Murray
1706-1708	FOIA Request and Response
1889	E-mail re: FOIA Request
2127-2169	Investigation Report FOIA Request to Grafton Sheriff with copy of reply and documents produced
2449-2455	FOIA Request Letter 10/10/05 from Frederick Murray with response from AG
2626-2639	Filing of Notice of Appeal

¹ These page numbered documents were page numbered in the upper left-hand corner by state police, but were re-numbered in the lower left-hand corner by the Attorney General criminal bureau when received. Although on a majority of the documents the numbering is the same, at some point discrepancies did occur. Therefore the page numbers referred to are in all instances the numbers in the lower left-hand corner.

Other Documents in the Possession of State Police

Websleuths blog re Maura Murray – 101 pages

Printouts from Maura Murray web page – 70 pages

USGS topographical map from internet – 4 pages

3 press releases – 8 pages

2 posters – 2 pages

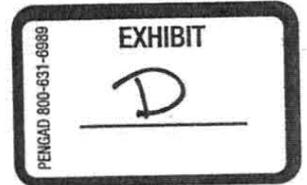
Newspaper clippings – 138 pages (may contain duplicates)

Videotape of 20/20 segment on Maura Murray (a duplicate of this segment entitled 20/20 Vanished, March 17, 2006 on cd is also in the possession of the Attorney General's office, only the video has been reproduced)

Documents from AG File

Missing Person's Poster

AFFIDAVIT OF JEFFERY A. STRELZIN



I, Jeffery A. Strelzin, hereby swear and affirm as follows;

1. My name is Jeffery A. Strelzin. I graduated from law school in 1991 and have been a prosecutor for approximately ten years. Prior to that, I worked as a Law Clerk and the Senior Law Clerk at the New Hampshire Superior Court, as an attorney in a private law firm, and as a prosecutor at the Merrimack County Attorney's Office. I am currently employed at the New Hampshire Attorney General's Office as a Senior Assistant Attorney General and serve as Chief of the Homicide Unit. Our office has statewide jurisdiction over the investigation and prosecution of homicide cases. My duties include assisting law enforcement agencies with the investigation of homicides and suspicious deaths, as well as the prosecution of homicide cases. I also supervise the other attorneys in the Attorney General's Office who work on homicide cases and suspicious death investigations. We handle approximately twenty homicide cases per year and are also involved in dozens of other suspicious death investigations each year which do not turn out to be homicides. In addition, we oversee the investigation of all officer-involved use of deadly force cases.
2. As part of my duties as a homicide prosecutor, I have been involved in the investigative phase of homicide cases and suspicious death cases. That includes monitoring interviews, reviewing and drafting legal documents, preparing search and arrest warrants, viewing death scenes and related evidence, working with the Office of the Chief Medical Examiner, attending and/or reviewing autopsies, working with the State Police Forensic Lab and other forensic experts, authorizing one party and body wire intercepts, negotiating and attending cooperating witness interviews, subpoenaing records, drafting pleadings, dealing with witnesses and related issues, and participating in grand jury investigations. Some of the cases I have worked on have begun as missing person's cases and subsequently became homicide cases. I have also worked on other missing person's cases which have turned out not to be homicide cases.
3. I have been involved with and assisting the New Hampshire State Police in the investigation of the disappearance of Maura Murray.
4. The following is based on my experience with criminal investigations in general and the investigation regarding Maura Murray in particular.
5. The Maura Murray investigation is open and ongoing. I am familiar with the State Police files related to Maura Murray and her disappearance. Based on my experience with criminal investigations and prosecutions and the information in this case in particular, I have a reasonable belief that it is possible that this investigation may lead to criminal charges. However, at this stage of the investigation, it would be detrimental to

our ability to continue this investigation and any subsequent prosecution if we are required to make public whether or not there is a person or persons of interest and the information on which those beliefs are based. In my experience in this case and in other cases, our investigation would be hindered in the following ways:

If there is or may be a person of interest, revealing that information publicly would A.) alert that person to our interest and make it harder to gain her or his cooperation; B.) enable that person to use what other witnesses have said to potentially cover their tracks by changing her or his story and/or destroying evidence; C.) potentially endanger witnesses that have provided information concerning that person; D.) possibly result in witnesses being reluctant to talk to us if they believe that what they tell us would be available to the person of interest; E.) likely result in public speculation which could lead to false leads including everything from sightings in unlikely locations to reports from psychics, that must be followed up on but that consume time and resources; F.) potentially result in the sources that have provided information being pursued by outside, non-law enforcement sources so that they feel harassed and simply refuse to have anything further to do with the investigation; and G.) reveal what other witnesses have said, thereby possibly tainting the credibility of witnesses that become aware of the other witness statements by bringing into question whether what they recall is their own recollection or has been tainted by what they have heard that someone else reported.

6. Revealing contacts and interviews related to leads that are not believed to be involved in any possible criminal activity at this time could also damage our investigative ability and ultimately the ability to prosecute any case because: A.) this information could be used by anyone that was a legitimate suspect to divert attention from themselves; B.) although the information may have been determined not to be relevant to Maura Murray, it may in fact be relevant to other criminal conduct; and C.) revealing what other witnesses have said can taint the credibility of witnesses that become aware of the other witness statements by bringing into question whether what they recall is their own recollection or has been tainted by what they have heard that someone else reported.

7. In addition, in my experience, it is often difficult to accurately predict what information will be important in a case months or years down the road. Some of our cases take months, years, or even decades to solve. A significant lapse of time between an event and a subsequent prosecution means that seemingly innocuous facts can take on great importance when they are viewed in light of all the evidence which is eventually collected in a case. Another important factor which cannot be predicted is what claims or defenses may be made on behalf of a defendant. Depending on those claims or defenses, information or evidence that seemed unimportant at an earlier time could become very important during the prosecution phase of the case. For these reasons, it is important to protect the integrity of an investigation and the viability of any potential future prosecution by maintaining the secrecy of the ongoing investigation.

8. I can provide further *in camera* testimony to the court to explain the status of the investigation and the interrelationship between the documents and information currently in our file. I cannot emphasize strongly enough that it is a key component in almost every criminal investigation or potential criminal investigation that suspects, persons of interest, persons who may be assisting them, and the public not be privy to the information that we have been able to gather. Maintaining that confidentiality provides us with a potential means to be able to gauge the veracity of information we receive, preserve the credibility of witnesses, complete our investigations before evidence is lost or destroyed, and protect sources from potentially dangerous criminals or others working on their behalf.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

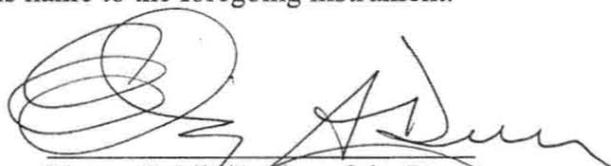
Dated: 3/29/2007



THE STATE OF NEW HAMPSHIRE

Merrimack County, SS.

On the 29th day of March, 2007, before me, Elizabeth A. Dunn, the undersigned officer, appeared Jeffery Strelzin, known to me (or satisfactorily proven) to be the person whose name appears above, and he subscribed his name to the foregoing instrument.



Notary Public/Justice of the Peace
My commission expires: 1-24-12